

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
March 22, 2011

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, March 22, 2011, was called to order with the determination of a quorum at 7:01 p.m. by Chairman Robert C. Gibbons in the Board of Supervisors Chambers. Mr. Gibbons introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Gibbons stated the Bylaws of this Board state the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

Members Present: Robert Gibbons, Ernest Ackermann, Dean Larson, Larry Ingalls, Ray Davis, Steven Apicella and Heather Stefl

Members Absent: Paul Ortiz and Marty Hudson

Staff Present: Rachel Hudson, Zoning Administrator
Melody Musante, Zoning Manager
Evelyn Keith, Zoning Technician
Aisha Hamock, Recording Secretary

Mr. Gibbons: We have two announcements really to make tonight but I will... Rachel will be sitting in for Mrs. Musante tonight because she is close to the one of the parties and so Rachel will handle the hearing on this case before us tonight. Also Rachel I want to... It is kind of hard for me to say this but I want to congratulate you on your proposed announcement coming up whenever it is official about retiring. And Rachel after twenty-six years will be retiring the first week in July. That is awful hard for us because I guess I have known you too long maybe or maybe I have been a burden on you for too long. But anyway Rachel, we will do the proper thing at the right time and I just want everybody to know that we will miss you.

Mr. Davis: You may want to make a third announcement, I noticed in the memo that we have from Melody Musante; she is now the Zoning Manager.

Mr. Gibbons: Yes and she has a real fancy title afterwards. What does that stand for?

Mrs. Musante: CZA, Certified Zoning Administrator.

Mr. Gibbons: Congratulations on that too. Are there any changes or additions to the advertised agenda Rachel?

Mrs. Hudson: No.

Mr. Gibbons: Okay, then before we hear the first case, does any member of the Board have a declaration or statement concerning any case to be heard before the Board tonight?

DECLARATIONS OF DISQUALIFICATIONS

Mr. Ingalls: Mr. Chairman, in case V11-1/1100060, I would like to declare that I am acquainted with a

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number of lot owners who signed that they do not object to the variance request. They include the Morecock's, the Scotts, the Wiemmers and the Becks and Mr. Waldo Beck is a former distinguished member of this body and sometimes I served with him. I have not spoken to anyone about the case and I will be able to participate fairly, objectively and in the public's interest.

Mr. Gibbons: Any other members? Mr. Davis.

Mr. Davis: Mr. Chairman, I have known Jeffrey and Jill Scott since about 1979. At that time I worked for the Virginia Employment Commission. I was a contract officer and had an on the job training contract with them. The contract lasted less than one year and I have not had contact with them since. I have talked with Jeffrey about the request for Variance. I am able to participate fairly and objectively and in the public's interest in this case before the Board.

Mr. Gibbons: Thank you Mr. Davis. Anybody else? Okay, I will ask the Secretary to read the first case please.

PUBLIC HEARINGS

1. **V11-1/1100060 - JEFFREY R. & JILL B. SCOTT** - Requests a Variance from Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards", A-1, Agricultural, of the front yard requirement to construct a new single-family dwelling on Assessor's Parcel 49-37E. The property is zoned A-1, Agricultural, and is located at 442 Wood Landing Road.

Ms. Hudson: The first case is V11-1/1100060, Jeffrey R. & Jill B. Scott, requests a Variance from Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards", A-1, Agricultural, of the front yard requirement to construct a new single-family dwelling on Assessor's Parcel 49-37E. The property is zoned A-1, Agricultural, and is located at 442 Wood Landing Road. The applicant is requesting a variance of forty (40) feet of the minimum fifty (50) foot front yard requirement to construct a single family dwelling on an existing 0.8769 lot, zoned A-1. The lot is located on Wood Landing Road between the Potomac Creek and Black Swamp. The lot has a thirty (30) foot wide ingress egress easement which splits the property. The front yard is measured from the interior most line of the access easement which would set the front building line approximately thirty (30) feet from the edge of the existing reserve drainfield according to the enclosed exhibit plat prepared by H. Aubrey Hawkins Associates, LTD dated March 2, 2011. As shown on this exhibit plat, the proposed building site would require an administrative waiver for the buffer requirements to the Resource Protection Area (RPA). The reason I put that in there is because the measurement to the RPA is closer than 100 feet to the Black Swamp side. I have had two people in the environmental section measure that and that is something that could be corrected by Mr. Hawkins. The zoning history on the property, please see the plat of survey dated April 3, 1970 by Sullivan, Donahoe and Associates attached to a deed dated January 7, 1971 between Holloway and Hart. July 9, 1984 this lot was granted as a deed of gift from the Harts to Carlton and Pauline Musselman, current owners of parcel 49-37E, subject to this variance request. You have the application before you, the application affidavit, the owner's consent form, the exhibit plat dated March 2, 2011 by Hawkins Associates, LTD, a letter from the adjacent property owner, a statement signed by adjacent property owners, survey plat by Sullivan, Donahoe and Associates dated April 3, 1970, you also have a letter from the Virginia Department of Health dated March 1, 2011, you have pictures that were taken and submitted by the applicant, the area vicinity map and the tax map. If you have any questions, I would be glad to answer.

Mr. Gibbons: Any questions of staff?

Mr. Ackermann: Could you go over the issue about the administrative waiver again?

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Ms. Hudson: Because of the age of this lot, if the house encroached into the RPA they could get an administrative waiver per the Zoning Ordinance. The administrative waiver is separate from what you are dealing with this evening. What you are dealing with tonight is the variance request as you know.

Mr. Ackermann: Is there any connection between the two? I mean, if we were to... I guess that is a hypothetical question I guess that if a variance were granted, would that have an effect on granting an administrative waiver or adversely?

Ms. Hudson: I would say not. There is some question and Mr. Scott can address that, there is some question about the measurement of RPA from the shore line.

Mr. Ingalls: I guess, you must have noticed what I noticed; the RPA is shown on plat by Mr. Hawkins. On the Black Swamp side, there is only about sixty-five (65) feet whereas it should be 100.

Ms. Hudson: Right.

Mr. Ingalls: About seventy-five (75) feet on the Potomac Creek side, which is also short. I don't know where... what that line he is trying to represent is, but that is not where the RPA should be shown.

Dr. Larson: Is this a true depiction of where the RPA is?

Ms. Hudson: I don't know about that plat. That plat is... we are looking at the new plat.

Mr. Ingalls: Which probably would help his case if it was shown more correctly.

Ms. Hudson: Mr. Scott is aware of our questioning. When he brought his application in, it was Amber that looked at the plat, the environmental planner, and I also had Steve Hubble look at the plat and measure and he came with the same information. But Mr. Scott may be able to answer a question about that. I have not talked with Aubrey Hawkins myself.

Mr. Gibbons: Well, have we answered the question?

Mr. Ackermann: I am fine with it, thank you.

Mr. Gibbons: Okay. We will go to the applicant now.

Jeffrey Scott: Thank you, my name is Jeffrey Scott, I live in Fredericksburg. I am here with my wife Jill, my beloved newlywed of thirty-five (35) years, Dion Scott, who would be a neighbor and the property owner Mr. Carlton Musselman is here. I only have ten minutes, I know I am going to take all of that so with your permission, Mr. Chairman, I am going to defer the RPA question until after my presentation. First of all, just thank you. I have served on many boards and I know that commitment and time it takes for you to come out on Tuesday night and do these things so I truly appreciate that. What we are requesting is a forty (40) foot front yard setback variance. I believe that we can demonstrate that the four conditions of approval have been met and respectfully request your approval tonight. I will discuss the location of the proposed home and I will discuss why forty (40) feet is critical. In general, Jill and I want to sell our house in Fredericksburg and move to Stafford County. We are both natives of Fredericksburg, we own a couple of houses, our goal is to sell them and have one house on Potomac Creek, a great place for our grandkids to play. That is what our intention is. We want to start paying some Stafford taxes just as soon as possible. The property is tax assessed for \$378,000 and we want to build an appropriate home. We do not have specific plans because we are pending this variance but we have retained an architect and viewed multiple houses online, spent quite a bit of time and among the several choices and frontrunner is a 3,750 square foot house that will probably increase but we are limited to two bedrooms on this lot as per our health permit. Regarding

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the hardship, the issue before us today, the lot is impacted and controlled by layers of regulations which came into effect after the land was subdivided in the mid 60's. Byrd Holloway and Duson Hart bought this parcel, some four and a half acres and subdivided it. Mr. Hart had a trailer there for many years. Now the property is overlaid with the Chesapeake Bay Act restrictions on two bodies of water, front and rear, 100 foot Resource Protection Area (RPA), which we are going to discuss those restrictions, non-disturbance areas, there is a 100 yard flood plain in the front and rear, twenty (20) yard setback from the sides, thirty-five (35) yard setback on the rear and a fifty (50) yard setback from the edge of the easement on the front. That is what our issue is tonight. There is also a septic tank and septic tank reserve and requires 100 percent reserve, which is shown on the plat. There is a ten (10) foot setback from that reserve, cannot be moved. Health department restrictions again for the placement of a drilled well and the well on the property is currently unusable. So if we view all these in the totality, it demonstrates a hardship of which a forty (40) foot variance mitigates these hardships. Regarding the west side alignment, you notice in our proposed building site on the western most side of the lot. The reason for that is it aligns the house with the neighboring house where the Scott's currently live, which is built on the creek side. We are on the marsh side. Their house is in front of ours. If we align the house any other way, we look directly into their house, their backyard and their pool. There is no way we can move it any other way. Also, it aligns the house with the shape of the lot. Further, it maximizes the use of the property; it also allows for turning into a driveway. We investigated having the lot on the other side... there is no room for a driveway there where if you viewed the property where the Scott's house is only four (4) feet off of the easement and there is an oil tank in the easement and we have boats and that kind of thing so we continuously are having to navigate a corner there that would be very tight on a turning radius to get in and out of a driveway so that is why we are on the western side. It also aligns us with the view of the creek. Regarding the forty (40) feet, a forty (40) foot easement fits into the current position of the existing home; it does not unruly encroach onto a roadway or existing homes. It provides us with a forty-five (45) foot side of a proposed building site. Remember now, everything we build has to be in that. Porches, garages, the house, decks, we can't go back, we are restricted on the back side, restricted on both sides and that is why we have to have that forty (40) foot easement on the front side. I want you to note that even with this the house is twenty-two (22) feet from the road; it is not right up on the road. It is a ten (10) foot variance off of the easement but it is twenty-two (22) feet from the edge of the road so there is plenty of room there for whatever traffic there may be. That is why we are here tonight with the hardship. Regarding the three other, as you know, there is four questions in the variance appeal. The second is generally not shared by other properties in the vicinity. Well, they are already built so they don't share this issue because they have already been done; we are the last lot. We do have an approval for the property owners and I can tell you that the property owners unanimously have been extremely helpful with wanting us to build there. Secondly... also on that issue I wanted to mention that five other houses were built, everyone would need variances, none comply except for one house, a gentleman named Charles Weimmer who owns a house with a very large lot. Every other lot there would require a variance. There was also previously awarded a front yard variance in 2003 to Mr. Cadow who did an addition. He built his original home without a variance and then when the variance came into play in the early 2000's, Stafford tells me 2001 to 2003, you had to have a variance in order to build his addition. So there has already been precedent for the variance in this area. The third question is shall not be a detriment to the adjacent property and will not change the character of the district. Our building would be an improvement to the neighborhood, consistent with the current homes and again we have a letter of approval, they have seen what we want to do, we talked in length about it, we've visited with everybody. Fourthly, is that it does not make reasonable practicable the formation of a general regulation. You don't want to pass a variance that would become something that somebody else would say he got it so I want it. Well in this case, we have a singular lot, I don't think there are a lot of lots now that are only a fourth of an acre, 0.4 acres is the residual property once the road is cut, a unique situation. It was previously platted; this lot was platted in the late 60's. It is also at the end of a long road, we call it a road but I want to chat about the road. It was not paved until two years ago or less. There is only one home east of us, there is no traffic there. Really what it is a private easement and a paved private easement. The Morecock's live to my east; they hardly endorse what we want to

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do. They are the only people who go there. There is a crabber, no home, at the end of the little peninsula and they run occasionally and go down and they have a little wharf down there a little dock down there but there is no traffic, there is nobody going there. So it is not going to create a situation that is going to be duplicable with in the county. I only have a minute and thirty seconds but I do want to ask if there are any questions about our application in particular, the letter and so forth. You can see that Mr. Scott wrote a letter, he is not related to me by blood or marriage and at the end of it; I point to you his conclusion where he doesn't simply say I hope you grant it, he says "as an adjacent land owner, I urge you to grant this variance". You see where his lot is, you see where his house is so you can tell that on the westward side, if we built on the east side or someplace else we would be looking right into their pool and backyard. You can see that the other houses are situated and then lastly... well no, this is the health department, the health department if I put in a pretreatment system will approve the current drainfield. I would take the current septic tank out and put in a pretreatment system, which we are happy to do. And then you see the pictures, here is the Scott house with the four (4) feet, you can see the shed there, you can see the next house here with the top, that is the Morecock's. They would have required a thirty (30) foot variance. This house here is Mr. Musselman's house and he would have required the thirty (30) foot variance. Every house there would have required a variance and so I have five, four, three, two and thank you if I had more time.

Mr. Gibbons: Well, is there any questions of the applicant? I thought you were going to discuss the RPA.

Mr. Scott: If you grant me time I would be happy to. Can I do it now?

Mr. Gibbons: Well I think that would be appropriate. I will ask the Board? Does anybody have any problem waiting?

Mr. Scott: Well, let's talk about the RPA and let's talk...

Mr. Gibbons: Hold on. Does anybody have any problem?

Mrs. Stefl: No objection sir.

Mr. Gibbons: Okay, go ahead. We have a ten minute limit so I have to ask permission.

Mr. Scott: I understand.

Mr. Gibbons: Thank you, go ahead.

Mr. Scott: I knew, Mr. Gibbons, that is would take me ten minutes to get that mouthful out. It proves a hardship but anyway, regarding the RPA, Resource Protection Area. When I had the plat done, I hired a firm to do it so let's talk about facts. I have never met the surveyor at the site; I have no relationship with the surveyors. I knew Mr. Hawkins from a rotary fifteen years ago and I had no influence over where he put the RPA. Mr. Ingalls is right, if the RPA lines were more stringent for our case. Where we will deal with the RPA is in the next part, which is the administrative waiver. We have to have an administrative waiver to build within the first fifty (50) feet of the 100 feet. As you know, it has been platted in 1989 and so with an administrative waiver, you can deal in the first fifty (50) feet of the 100 feet. The second fifty (50) feet of the 100 feet cannot be dealt with in any circumstance without approval from the Wetlands Board so, so, so... So here is the facts, we had the survey done, I presented it to the County, immediately upon doing so there was a question about the placement of the RPA lines, that they were in the wrong place. Stafford County to the best of my knowledge does not have an exact location for the RPA lines in this area. What I was given was an approximate sketch done with a pencil over a plat. So here is what I did, I went back to Mr. Hawkins, Mr. Hawkins there is a dispute... We are talking about the RPA line, is it here? Is it there? You know, where is it? Again,

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you have to understand I am not pleading Harry Homeowner with you but I have never had a plat done with RPA before. What he said was we derive the plat and the RPA from tidal charts and working on site. The RPA line is drawn from... the 100 foot line starts from mean high tide, that is where... it is not water is an extremely tidal area. I have been there when the water was up high and over the docks and I have been there when I wondered if I could get my skiff out. I have even had some area residents tell me that there are times when you can walk all the way across the creek to Crow's Nest. So the water moves quite a bit on the west wind and it blows all the water out. So what the surveyors use are charts and that is what he told me he used and that is what he told me in quote "Jeff we used tidal charts, we used mean high tide", and he also said, "I am willing to talk about it with anybody and I am willing to change it if somebody can demonstrate that it should be changed." That is all... that is what I know about the RPA. I also know this, if there is a dispute on the RPA, I am happy to work with you because it has no bearing truly on the development of the property. We're only going to be within the first fifty (50) feet anyway regardless of where it is and it has no bearing on the front yard variance that we are addressing tonight.

Mr. Gibbons: Any questions?

Mr. Apicella: On the RPA issue?

Mr. Scott: On anything.

Mr. Gibbons: On anything.

Mr. Ingalls: On anything. I guess... the RPA, I saw that right away. I am not going to debate whether Mr. Hawkins knows what he is talking about or not or talk about whether he is right or wrong. The County can determine that, I don't think it really influences what I am doing here tonight and like I say, it could possibly help your case if it was in the right place. I guess it bothers me a little bit that you are here asking for a house of some unknown size, unknown shape, unknown, unknown, unknown to be able to put on this piece of property and asking for a Variance. Obviously, your plat kind of indicates that you are not really asking for a forty (40) foot variance across the whole front. You are asking for forty (40) feet at one corner and something different at the other corner. Is that correct?

Mr. Scott: Well, we had to take it to its most extreme point. Obviously, if you asked me would it be a variance of various levels, I guess technically that would be correct. But we don't want to have a series of variances. What we want to have is a singular variance from this point.

Mr. Ingalls: The problem is if I give you a forty (40) foot variance, you could put the house ten (10) foot off at the whole parallel to the road, which, the information that you are presenting to me doesn't indicate that is what you really want to do.

Mr. Scott: No, that is not what we are asking.

Mr. Ingalls: We can't give you a ten... I wouldn't be able to... If I gave you a forty (40) foot variance, the variance goes with the land and doesn't have anything to do with anything else and if that is what we said we would be saying you could build ten (10) feet from the edge of that easement all the way across but I probably wouldn't want to do.

Mr. Scott: Well, I agree. You know what I wouldn't either.

Mr. Ingalls: Well...

Mr. Scott: Because then once again you look at that, I am orienting the house, if you were to face the house that way, number one, I would be right on my neighbor and number two, I would be looking

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right into their back yard pool. That is why it is not like that.

Mr. Ingalls: Like I said, you say I looked at and sketched it out and if you take that same rectangle that you got and put it up square against your ten (10) foot offset in the back.

Mr. Scott: Right.

Mr. Ingalls: You could be probably... you would be twenty feet off of the easement line and would only need a thirty (30) foot.

Mr. Scott: I would still need ten (10) feet because I want to be on that corner.

Mr. Ingalls: Well, if you turned it, it wouldn't...

Mr. Scott: If I turn it... believe me, I understand sir, I hear you. I can tell you we have had a little piece of paper and we have turned it a hundred times and that is where we ended up. What we wanted to do was come here tonight and be very reasonable, have something that fits the neighborhood, something that is not going to stick out and something that is not going to be obtrusive to any of my neighbors. I think we have demonstrated that.

Mr. Ingalls: Well, part of what I like to look at when we are granting variances is what are we really saying and what are you really asking. I can evaluate something that I know something about. It is harder for me to approve something that I know less about. Is it a two story, three story?

Mr. Scott: Well, let's talk about that, I'm glad you asked, I really am. We have a dialogue here. I've told you I have sat on Boards myself. There is a sequence that we have to follow, and I have to tell you part of it is economic. We don't want to be drawing up house plans; you know five, ten or fifteen thousand dollars and not have a variance approved, right? That would not be a happy ending. We need a front setback variance to determine the overall size of the envelope, a foot print. Without the overall size of the envelope I go to the architect and tell him I want to build a house of unknown size. It is a multitude, Mr. Ingalls, of the chicken and eggs. So if we had the footprint then we know generally the size of the house to be built. Everything has to be again all in there; we can't go back in there any further with any type of building or appurtenance. Then the house size determines the limits of the administrative waiver. I need the administrative waiver to determine the final position of the septic field. So you see all that starts with the front yard variance. That is why I am here today. That is why I didn't do the administrative waiver first, that is why we didn't do the house first. Now if you want me to I can pull my file and I can show you some general sketches of what the type of house we are looking to build. Would you like to see those? I can give them to you.

Mr. Ingalls: I asked what type of house was it going to be?

Mr. Scott: I have those with me.

Mr. Ingalls: Was it one story, two story, basement? You don't know any of those answers?

Mr. Scott: Here is what we are looking for. More than likely because of the way this house is situated, we need garages and those kinds of things. We are probably going to end up with a garage that drives under and then the main living area and then two bedrooms is what we are going to end up with. Because there is not enough room to put a separate garage have the house and still have a view and do those things. The answer to your question is what we have actually been looking at have been more the title, you know, beach type places if you will, that provide for everything to be in essence in one column. So that is what we are looking at. You are going to have a first floor, you are going to drive into or under the main floor of the house. We are going to have a second floor that is going to be the

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living area. We are going to have a third floor where our bedrooms are.

Ms. Stefl: Mr. Chairman.

Mr. Gibbons: He is not done yet.

Ms. Stefl: Oh, okay.

Mr. Gibbons: Steven is next.

Ms. Stefl: I am just curious about that design, that is why.

Mr. Ingalls: Yes, you know if, ands and buts don't help me. And I guess I don't understand why you haven't come up with a house design. Would it be fair to say your house design is going to fit within that envelope?

Mr. Scott: Yes Sir, yes it would.

Mr. Ingalls: Okay, that is a start.

Mr. Scott: That is a very good start. Believe me it was not just a small thing to be able to say that. It is quite a bit of work to make it do that. Remember everything has to be in there. From the back of the house where those lines are you can't have your garage back there, you can't have a deck back there; you can't have anything back there. The total buildable area is .41 acres; it is a small area to begin with. We only have .88 acres and we divide it with a road, right? So when you divide .88 with a road you end up with .41, so less than half an acre of which the whole entire back third is taken up with the drainfield, the reserve on the drainfield, the septic tank and the distribution boxes and the set back for that too.

Mr. Ingalls: Do you know what the flood elevation is on that lot?

Mr. Scott: Where the one hundred foot flood is?

Mr. Ingalls: Yes, the hundred year flood.

Mr. Scott: I do, yes I do. It is along the edges. I have that plat is you want to see it.

Mr. Ingalls: Do you know, can you tell me what it is?

Mr. Scott: Yes Sir, it comes up only on the first ten feet or so on each waterfront.

Mr. Ingalls: Per this plat the highest elevation that I see is elevation eleven, which is eleven feet above the water. Now if the flood down there is...I have got to believe it is between seven and ten. Is the one hundred year flood elevation, if it is higher than that you...

Mr. Scott: Isabelle came through...

Mr. Ingalls: Your front corner is elevation eight by this plat. It is either...it could be two feet under the flood or it could be a foot above, I am not sure.

Mr. Scott: That is another reason we went with the design that the first floor in essence can close etcetera, it is garage and storage and that type of thing. The second floor is the living area. In Isabelle the road flooded, but the rest of it...there has never been water over the road that I know of from any

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property owner.

Mr. Ingalls: Well Isabelle may or may not have been a hundred year event. Like I say I am struggling with what you are asking me to do in terms of not knowing what you are really going to build there yet. And I understand a lot of what you said in terms of...but that is your choice in not spending the time and effort to come up with a house design, not ours. That is all I've got right now.

Mr. Gibbons: Steven.

Mr. Apicella: Larry kind of...Ingalls eluded to this question so I will take it to the next level. Is there any sighting/alignment of the house that would place it better within the setback requirement that would mitigate your setback variance needs? I understand what you want to do and I appreciate what you want to do in your needs and the community needs. But in terms of looking at alternatives what other options...

Mr. Scott: Here is the answer to that Mr. Apicella and the rest of the members of the Board. I wanted to come here tonight with a very reasonable request. We have investigated in thoroughly. I did retain an architect, I do have some sketches. I do not have a full plan. We have moved things around and we tested, we have tried various alignments and frankly a little more would be a little better. But we don't want to do that. I am not here to negotiate and play games, what we wanted to do was come in with something that was consistent with the neighborhood, which this is. That we know we could deal with and the forty feet will do that. And then this alignment, because you see the alignment is important. If you do what others have suggested and move the line with another way then we are back to square one, it won't again because we are looking into our neighbor's yard. So if you start with that and you start with being on the western side, just follow me now, and then you start with we have to stay everything, ten feet minimum off our reserve. Okay that is a hard line and that line will not change. That line there where it shows the corner of the house proposed building site is, that doesn't go away. So that is a hard line and then we had the western side as a hard line that is how you end up with this configuration.

Mr. Apicella: Again I appreciate where you are coming from, I wish we had an attorney to help me better explain what we learned at our training session. Which is number one, where you might want something and desire something you might have to give in order to get what you ultimately want, okay? Which is in this particular case is...what I understood from our training session is you can not necessarily place somebody jeopardy situation by denying a variance because it would create such an undo hardship that they would not be able to use their property at all. But what I am not hearing from you is some flexibility in terms of where the sighting of this house may go. I understand and appreciate that it might impact your sight lines, it might impact where your neighborhood sees your house or you see your neighbor's house. But in order to get you what you may want, I am not hearing the flexibility that you would consider some other options. Which is again moving the sighting of the house, a different size house, I think that is partially what you will do too. So at the end of the day if this is what you want and you are sticking to it, you may not get what you want at all.

Mr. Scott: I don't know...I don't know what to tell you. I mean I didn't come here tonight and say well I will ask for forty and talk about thirty.

Mr. Apicella: I am not saying this is a negotiable...

Mr. Scott: What I did was I did this. I assumed that if we were reasonable, and I know we are, then I am going to present reasonable evidence of a hardship. And I think that if we look at what is reasonable evidence of a hardship and the other three items that are in attest for the variance then I believe that we have accomplished that.

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Mr. Apicella: And I am going to give you my perspective, based on what I have learned, is that what you are saying to me I would not necessarily consider a hardship because you are going to see your neighbors yard to me does not rise to that level of being a hardship. So I am going to leave it at that for now but I might have some other questions later.

Mr. Gibbons: Heather.

Ms. Stefl: I guess I to am alluding to, I mean as a woman who herself owns a beach house down at Bethany and that design you speak of is very similar to the one we have. But the thing is I have to contend with my neighbor's site. I mean we have put a tree there now and as I look at this it is almost like you have tried to position the house to better your view of the water so that you could have your front yard...your front nothing but glass kind of thing and rather than looking into what is best for the property. And so I too am sitting here struggling on is this really the best. And I am also concerned that you do that garage in the flood, and I understand what you are saying, but three stories and then if you even consider like a widows walk, you know the porch up top to really be able to maximize that sunset view with the grandkids, you know now you are really getting in to a pretty substantial home on something. So I too, Steven and Larry, I am struggling.

Mr. Scott: Can I talk to you about that?

Ms. Stefl: Sure.

Mr. Scott: There is a height restriction.

Ms. Stefl: Right.

Mr. Scott: Thirty-five feet.

Ms. Stefl: Right.

Mr. Scott: And so what we have done abides by that height restriction. I do have, if you would like to see them, I can show you a sketch of the house. It is up to you guys.

Mr. Gibbons: Let me see if anybody else has questions.

Dr. Larson: Mr. Chairman, I have a question. Mr. Scott, first my compliments for your homework.

Mr. Scott: Thank you sir.

Dr. Larson: What people are struggling with and you know the four main things for a variance, but another thing that we have to consider is we need to grant the minimum variance that there can be...

Mr. Scott: Yes sir.

Dr. Larson...and be reasonable. So that is what people are struggling with. What is the minimum that we can grant and still be reasonable?

Mr. Scott: That is correct.

Dr. Larson: The questions I had was you show the ten feet distance from the edge of the easement to the northwest corner of the house. Do you know what the distance is from the edge of the easement to the northeast corner of the house?

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Mr. Scott: I do, if you give me one second, I can tell you approximately. I have got my little handy dandy rule here. Okay edge of easement, twenty-three or four feet.

Dr. Larson: Twenty-three or twenty-four feet?

Mr. Scott: Yes. So it is more, but that is because...again that is why I wanted to bring in my comments about why the house is that way. Now bear in mind we are going to be living in...this is our primary home. This is not a second home. This is not a vacation home. This is not a beach house. This is our primary home. We are going to be here. This lot is assessed for three hundred and seventy eight thousand dollars. We are going to build...you know we are fifty-six years of age we are going to build a house here. Okay it is going to be where we are going to live. It is not...so we want to do something that is appropriate for that...

Mr. Gibbons: I want to make sure we answer the Doctor's question first.

Mr. Scott: Yes sir.

Dr. Larson: Yes, that is all I had. Thank you.

Mr. Gibbons: Doctor Ackermann?

Dr. Ackermann: No thank you.

Mr. Gibbons: Any further questions or discussion? Larry.

Mr. Ingalls: You act like and I am not going to say that you have a set of plans that shows...the plans just need to show the footprint.

Mr. Scott: I have them.

Mr. Ingalls: And how many stories it is and how tall it is and things like that. But that is not...you did not present that as part of the evidence that I have to review so I am trying to draw some of that out.

Mr. Gibbons: Do you have it with you?

Mr. Scott: I do.

Mr. Ingalls: And maybe I wouldn't...you know ten feet off that line maybe thirty-five foot tall right there wouldn't be appropriate. Whereas maybe a one story on that side, maybe would be appropriate where it was just ten feet off the road. And that is the types of things that I am looking at.

Mr. Scott: When we speak of appropriateness, I assume we are talking about relative to the neighbors.

Mr. Ingalls: Well the neighbors and the variance required. That influences me if I am ten feet off, thirty-five up versus ten feet off and only twelve feet up. Air and light and stuff enter into variances, so it's a consideration.

Mr. Scott: I understand. I am with you.

Mr. Gibbons: Go ahead.

Mr. Scott: I have got a couple pencil marks on it.

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Mr. Ingalls: Is there any reason you just didn't put it on here?

Mr. Scott: I didn't have it. We weren't...we wanted to get here. We wanted to do this; I didn't have them finalized. I didn't know if it was going to be appropriate or not honestly, if you really want to know. I didn't know if it was going to be appropriate because they are not stamped per say. This is the first floor and you will notice that Potomac Creek... inaudible. Okay, so bear with me, the first time around the track gentlemen.

Inaudible discussion ensued between Mr. Scott and the Board, no microphones were on.

Mr. Apicella: Thank you.

Mr. Scott: You're welcome. There you are.

Mr. Gibbons: Roughly, how many square feet do you think this is?

Mr. Scott: That is thirty seven hundred and five, including the basement and first floor.

Mr. Ingalls: An attractive home isn't it? Can I ask the County something? Rachel, you haven't probably seen this so...decks and porches have different setback than...

Ms. Hudson: Decks and porches may encroach.

Mr. Ingalls: May encroach?

Ms. Hudson: Yes.

Mr. Ingalls: But if you give a forty foot variance...

Ms. Hudson: Not into the RPA.

Mr. Ingalls: I know. But how do you treat a porch if we were to grant a variance of forty feet, could he add a ten foot porch on in front of that?

Ms. Hudson: Miss Evelyn.

Mr. Scott: The code...

Ms. Keith: I would say no.

Mr. Scott: I can tell you...

Ms. Hudson: I have not done those in years and I would have to refer to my residential plans reviewer.

Ms. Keith: I would say no because we would look at the forty foot variance for the house itself (inaudible).

Mr. Ingalls: That was what I was getting at. If you were to approve what he has asked for and he...like I said you have not seen this...

Ms. Hudson: No.

Mr. Ingalls: ...to examine it.

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Ms. Hudson: I have not seen...this is the first time I have seen this.

Mr. Gibbons: No, but you have a copy?

Ms. Hudson: Yes.

Mr. Ingalls: You know he is talking about a lot of porches here up on the second floor and things like that. Then you would probably have to say you can't build those because they don't...they are not the house.

Mr. Scott: All the porches and everything is enclosed in that building site. What the code says...

Mr. Ingalls: But that is not a building, a porch is not a building. Now you've got a structure.

Mr. Scott: Let me finish.

Mr. Ingalls: Okay.

Mr. Scott: I am willing to stipulate that our porches etcetera will be in that footprint. The building code says we can have a twelve foot setback on the sides for a porch but not on the...on the back for a porch, but not on the sides. The rest of the house goes, and that is why we came up with this design. Number one is the flood issue, you know we get a big thing going a double Isabelle; we only have two bedrooms okay. So we had to build up and so we have our living area and then we have our two bedrooms up.

Mr. Gibbons: Okay, what I would really like to do right now...we've gone far enough. I would like to open the public hearing for all the comments and then we will come back to the applicant.

Mr. Scott: Okay. That's wonderful. Thank you so much.

Mr. Gibbons: No thank you. Anybody else like to speak for it?

Ms. Scott: Good evening everyone. My name is Dion Scott and my husband wrote a letter that is included in your package tonight, and again no relation to the other Scott. But I am definitely in favor of what they are planning to do. I would very much like to see a house on that lot. It has been vacant as long as I have lived there since 1989. As for the flood, I was there during hurricane Isabelle and the water did come up a little more than half of the road but only in a very small area kind of like a half moon, so it didn't even cover the whole road. And as long as I have lived down there, since 89 that's the worst I have seen it and we have had lots of weather including the microburst that came through the very next spring. And the other issue is as well, we also got a variance for the larger part of our house which is on Jeff and Jill's lot side and that corner...and again that corner of the house is about four feet away from the side line and that addition that we got a variance for is much larger than the original structure to the house, which includes a live in attic space so essentially three stories as well. So I just thought I would like to add those comments and I do feel, though I do understand because Jeff and Jill's building on this lot depends on what happens here tonight, and the size and shape of the house. But they did show my husband and myself tentative plans I think the same ones you have before you. We are very pleased with that and would very much like to see that house or a similar house on that lot. It has been vacant for so long. Again we have very little traffic through there. There are days, even the Morecock's aren't there now, they are living elsewhere. So there have been many days when our vehicles are the only vehicles that travel that road to that extent. I know that Robert Cadow's house as well, he has I think, a tower that is at least three stories high. I doubt if the whole part of his addition is that high. What I have seen of Jeff and Jill's house, it very much would fit

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into the neighborhood. I think other than the Musselman's house; every house down there is higher than one story. I think the Musselman's house is the only house down there that's a one story house. But I am definitely in favor of them coming down.

Mr. Gibbons: Thank you very much Ma'am.

Ms. Scott: Thank you.

Mr. Gibbons: Anybody else? Okay I will bring it...I will close the public hearing and bring it back to the Board. It seems to me that we have had a lot of information presented tonight to us that we did not have previously before we met.

Mr. Apicella: May I ask just one question for clarification? Are you currently the owner of the property?

Mr. Scott: No, I have a contract on it as per the application. The lot owner is right here, that is Mr. Musselman and his wife Pauline.

Mr. Apicella: Thank you.

Mr. Gibbons: So I would like to make a recommendation, I have not done this in a long time, but when we take a look at what we have had presented tonight and if you want to put a committee together to meet with him or we can go down and take a look at the neighborhood. I did not go and look at the neighborhood. I will be honest with you. I usually do, but this one I didn't.

Mr. Ingalls: I guess what I would like to see is that we table this request and ask for additional information from him to incorporate what house he thinks he is going to build, if that's the one. Put it on his drawing so that we all know what we are talking about and how it fits. You know if I look inside my heart I know that this lot deserves a lot of consideration, but at the same time I think I need to know what that consideration is and not a blanket I am going to build something inside of a forty-five by sixty-eight foot square or rectangle. And that is all we know and we all know a variance goes with the land. If Mr. Scott decides he is going to walk away the next person who buys this lot and if we have granted this variance can build anything they want within that square. We have no control over it. So I think I would like anyway, I would like for the applicant to put together more information that actually shows what he really intends to do. So that we can look at that from that respect versus...because you know this kind of muddies the water for a little bit. And actually the closest to the road the house is the tallest versus the other end, but that is one issue. But like I say, when I see these decks and porches I know the county is going to have some questions about well what's...it may be you might find yourself needing two variances, one for the house and one for the deck or porch. I don't know. I don't know and truly I don't need to see people more than once. And if we can solve it all at one time I would prefer to solve it all at once than have you come back later and say oh now I am here because I need a variance on my deck or my porch or what ever he might need.

Mr. Gibbons: Okay.

Mr. Ingalls: But I would like...

Mr. Gibbons: Well let me...

Mr. Ingalls: Okay.

Mr. Gibbons: Ray? Nothing. Steven?

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Mr. Apicella: I would concur with the recommendation to table this. I would also like to see the applicant at least consider some alternative options for the sighting...

Mr. Gibbons: And we will make a list once we get agreement. Heather?

Ms. Stefl: Yes I do have a question and I might be out of line.

Mr. Gibbons: It won't be the first time.

Mrs. Stefl: Yeah I know, I know. So I might as well ask for forgiveness than permission, I guess. Is the...if we award the variance is there a condition on your contract to purchase the property? I mean is there a kick out if you don't get your variance?

Mr. Scott: That is correct.

Ms. Stefl: Okay, alright, thank you.

Mr. Ackermann: Mr. Chair, I had been out to look at the property and there a number of houses... Several houses that are on that paved portion are very close to that paved portion. My impression of the property was without a house there I should say. I think it would be useful for me to see some more plans about what that proposed building would be like. Thank you.

Mr. Gibbons: Doctor?

Dr. Larson: Mr. Chairman, I have no objection to seeing more information. My initial feeling is that this property is going to be tough to deal with as far as a builder goes, there may be cause for a Variance but I think we need, I agree with everybody else, I would like to know a little bit more about what we are varying before we grant the box.

Mr. Gibbons: Okay.

Mr. Ackermann: Just another question.

Mr. Gibbons: Go ahead.

Mr. Ackermann: Do we have to grant a box? I mean, does it have to be a straight line variance or could it be a variable one as well.

Mr. Ingalls: Ummm hmmm.

Mr. Ackermann: Okay, thank you.

Mr. Gibbons: Okay well everybody agrees Mr. Ingalls, so do we have a list of what we want? Do you want to list points that you would like to see?

Mr. Ingalls: I would just like to see him present a site plan of what he is actually going to build. The outside shape, I don't need to know anything about the inside, the decks and the porches and stuff. Heights maybe, just to say it is so many feet tall and some of this might tell me, so that we can look at and say what variances are we granting. Are we just granting a ten foot at one corner and twenty-three or four at the other corner and what is in the middle? I don't know. I think like my colleague says I think we kind of have looked at this thing and said are there other options that would minimize the request to the point where it was more conforming. It is never going to be conforming. I think a lot of us realize that. So we have to figure out, what is the best for everybody here and the things about

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variances is neighbors change and it is with the property. I listen to the neighbors and I listen real closely and I try to listen to what they are saying and things like that. But, because some neighbors say that it is okay with them, well, the next neighbors moves in and he said daggone, how did he build that? You know and so we want to make sure that we have done the best job we can so... I would just like to see you put the footprint of your house here and on this and maybe, I think the flood line would be interesting. Again, I think it is just going to help you, maybe. That is all I really want is to see what, you know, what variances are we going to be granting? Are we going to be granting a house variance? Like I said, it may be another variance in there and that is what bothers me more than anything else, it may be a deck variance or a porch variance required for you to be able to build this house because from looking at, I guess you call the second floor, a porch and a deck wrapped all the way around it.

Mrs. Stefl: I get the impression that's within the footprint.

Mr. Ingalls: Yes.

Mrs. Stefl: It's not like they are going to be extending anymore.

Mr. Gibbons: Yes, but what they are saying is that they want to see it positioned on the property.

Mr. Ingalls: If we approve the house, you can't... that doesn't exclude, we have not agreed to the porch.

Mrs. Stefl: Even though it is still within the same footprint?

Mr. Ingalls: It could be within the same footprint but it still may need its own variance.

Mr. Davis: Mr. Chairman?

Mr. Gibbons: Yes Sir.

Mr. Davis: I will go along with the majority but the applicant has already said that the house is going to within this footprint. He has already said that the porches are going to be within this footprint. I don't know what more we can ask.

Mr. Apicella: I think what some of us have said is that we might be more amenable to granting a variance where it mitigates the overall setback so I think it would be to the applicants advantage to provide us with some alternative options.

Mr. Gibbons: Okay. So would you like to make a motion for deferment?

MOTION:

Mr. Ingalls: Yeah, I will make a motion that we table this for additional information from the applicant.

Mr. Gibbons: You have to defer. There is a new rule out there.

Mr. Ingalls: Okay, to defer it for additional information from the applicant. We have had the public hearing and we don't need to redo all that stuff.

Mr. Gibbons: Right, do I have a second?

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Mr. Ackermann: I'll second.

Mr. Apicella: May I ask a point of clarification? Is it open ended or is there a time limit?

Mr. Gibbons: No, I want to go to the next meeting.

Mr. Apicella: Okay.

Mr. Ingalls: To the next meeting?

Mr. Gibbons: Yes, we have another application next month so we will get it within the month. I would like to... So if you would come forward before we vote on it. Do you understand what we are asking for?

Mr. Scott: With the exception of the idea of, you know, I feel like... I don't want to get into a negotiating role with you, you know. So the idea is, I mean I can have a plan done but I am not going to have three, four plans. In other words, what we are going to do is take that footprint and put it in this box. It is going to show those things but it is not going to show plan A, plan B, you know, plan C. is that acceptable number one? And number two, I would love to meet anyone at the property. if you have not viewed the property, I think it would be extremely eye opening because again to the hardship and uniqueness, it is at the end of a very long driveway in essence. But I will be ready for the next meeting, that will be no problem.

Mr. Gibbons: Okay. Is that fair enough to everybody?

Mr. Ingalls: Yes.

Mr. Gibbons: I just want to be fair, that's all.

Mr. Scott: Is it appropriate that I contact you Mr. Chairman about a meeting at the property or not?

Mr. Gibbons: No, it would be better for us if we only go one or two at a time. If we go as a congregation we have to call the Free-Lance Star.

Mr. Scott: I see. Okay. Any more questions?

Mr. Gibbons: No thank you.

Mr. Scott: Thank you.

Mr. Gibbons: Okay, so I will call for the question on the floor, all in favor say aye.

Mr. Ackermann: Aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

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Mrs. Stefl: Aye.

Mr. Gibbons: Aye. All opposed? And thank you very much.

VOTE:

The motion to defer the Variance passed 7-0.

Mr. Ackermann – Yes

Mr. Apicella – Yes

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Ingalls – Yes

Dr. Larson – Yes

Mrs. Stefl – Yes

Ms. Hudson: I just have a question.

Mr. Gibbons: I was going to ask you one but you go first since you are a lady.

Ms. Hudson: My question would be what I believe what you are wanting to see would be a plan with the setbacks to say the western corner of the house, setbacks to the decks and porches from the other end of the house, the mid of the house, wherever... that is what I am getting.

Mr. Ingalls: Yes, because if you look at what he presented to us, the basic footprint of the house is only fifty-three (53) feet and his rectangle is sixty-eight (68) feet so there is fifteen (15) feet in there somewhere. You know...

Ms. Hudson: But you are looking to get setbacks to different corners of the house, the entire house with the...

Mr. Ingalls: I think you need to look at it from the terms of if I am going to approve a building plan for that lot, would I approve it with the variance he has requested or is there something else that you need to say, well what about this.

Ms. Hudson: Right. Where we would be, when we review it, when the residential technician reviews the plan, she is going to be measuring to those particular setbacks.

Mr. Ingalls: Right.

Ms. Hudson: I got you.

Mr. Ingalls: Like I said, I am trying to avoid a second go around here if we can help it.

Ms. Hudson: I understand. Thank you.

Mr. Gibbons: How about giving us a plat of the homes within the vicinity of the setbacks.

Ms. Hudson: I don't know if we would have those. We don't keep the plats. We can look to see if there is anything and if we have something we will provide them.

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Mr. Gibbons: If you have anything on there... it would be interesting...

Ms. Hudson: Sure. We have the Cadow because of their variance.

Mr. Gibbons: Okay.

Mr. Ackermann: So, I just have one more question, it may be a technical issue but on the plan that we got here, the first floor is the forty-five (45) by... it fits within the forty-five by whatever, the sixty (60) foot, the sixty-eight (68) foot piece. This one here but the second floor with the porches goes out to fifty-five (55) feet, is that an issue for us to consider? Or is that an issue for the homeowner to consider or an issue for you to consider? You know, because we've got the box that is here is forty-five (45) by sixty-eight (68).

Ms. Hudson: Right.

Mr. Ackermann: But then with the added deck or porch on the back it goes out to fifty-five (55).

Ms. Hudson: I would have to look at that.

Mr. Ackermann: Okay. So it is not just on the ground?

Ms. Hudson: No.

Mr. Ackermann: We are looking at how it is going up?

Ms. Hudson: Yes.

Mr. Ackermann: Thank you. That is helpful.

Mr. Gibbons: Okay, we want to thank you for coming tonight and we will see you next month. Same place, same time.

UNFINISHED BUSINESS

None

OTHER BUSINESS

None

ADOPTION OF MINUTES

2. February 1, 2011

Mr. Gibbons: Okay, now I will take unfinished business later tonight but I want to do the minutes first, the February minutes. Anybody have any corrections? Okay, I need a motion for acceptance.

MOTION:

Ms. Stefl: I move to approve the minutes.

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Mr. Apicella: Second.

Mr. Gibbons: All in favor say aye.

Mr. Ackermann: Aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

Mr. Ingalls: Aye.

Mrs. Stefl: Aye.

Mr. Gibbons: Aye. Any abstentions?

Dr. Larson: I abstain.

Mr. Gibbons: One abstention.

VOTE:

The motion to approve the February 1, 2011 minutes passed 6-0-1.

Mr. Ackermann – Yes

Mr. Apicella – Yes

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Ingalls – Yes

Dr. Larson – Abstained

Mrs. Stefl – Yes

Mr. Gibbons: Melody is back. I will do this first, when we went to this meeting in Fredericksburg and I thought it was a good meeting. We asked Melody and the staff to come up with any comments that Chandler had made and to look at Fredericksburg and other people's way of doing business to see if we could improve what we are doing ourselves. So Melody, do you want to go over that, what you have here tonight?

Mrs. Musante: Can you give me just a second to get myself oriented please. Thank you. Okay, what I started off with Mr. Gibbons was a draft of a new staff report, which is one of the handouts you had tonight. We haven't even worked on the application yet, I guess I am kind of putting the cart before the horse but I felt like the staff report was more important than dealing with the application. I did review the City of Fredericksburg's application, I reviewed Spotsylvania, Prince William and in looking all three of those localities, our application still provides more information than those applications do. Now their staff reports were better than ours and that is why I started with the staff reports first. The layout is completely different and like I said it is just a draft. I would love any comments or whatever

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you would like to see in the staff report. This does not include... what will happen is you will get a copy of this with the attachments right underneath the heading, you will see the attachments one, two, three through eight. Each one of those attachments would be labeled and attached to this so your packet is actually going to be thicker but it is going to have more information in it.

Dr. Larson: Now it is consistent?

Mrs. Musante: Yes. This would be a change and would stay this way unless... You direct us on what you would like to see.

Mr. Gibbons: Alright, you are suggesting a two-step approach. First of all, try to come up with a staff report and clean that up?

Mrs. Musante: Yes.

Mr. Gibbons: And then we will review the application to make sure that...

Mrs. Musante: Our application and I will state this again, in my opinion, is better than the three localities that I just stated. It does have more information on it. I know that Mr. Ingalls at one point, I don't mean to point the finger at you, about having the points about the reason they are requesting the variance. That we could incorporate into the application. Currently they only give us... we give them a sheet stating what the points are for granting a Variance. We don't require them to put that in their application, we ask them too but it doesn't state that. I think that is one thing that we could change on our application but we would put it in the staff report. It would be something you would see coming from us, not so much the applicant.

Mr. Ingalls: Well as I understand in listening to Mr. Chandler, he liked the idea of the applicant saying...

Mrs. Musante: I agree with that because it is less work for me because it is less work for me.

Mr. Ingalls: What is the answer to the question? The strict application or provision of this chapter would produce a hardship and he wanted the applicant... he put the applicant on the spot, you tell me.

Mrs. Musante: I agree with that.

Mr. Ingalls: Because we get criticized sometimes because we are trying to draw that out of them and people don't like that. Saying well, you shouldn't help them.

Mrs. Musante: I agree with that and that is something that we can, that is just a minor change with our application. It definitely will make it easier for me to do the staff report.

Mr. Ingalls: I would think they still may have in there a more... more information about each of those in their submittal somewhere else. But in the application, at least make them give something for each

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of those. Like I said, that is what I got out of Mr. Chandler's, on that point about the applicant.

Mrs. Musante: Okay.

Dr. Larson: Do they pay for the variance process before they get their application?

Mrs. Musante: No they submit their application at the same time as they give us the check.

Dr. Larson: So while we describe your hardship, if we could say is it self imposed?

Mrs. Musante: Yes

Dr. Larson: It might save them some money.

Mrs. Musante: Well, I have to admit I do...if I feel like it is not a good idea for them to submit an application I will tell them that...I mean I have had people come out and ask me what do you think my chances are? This is my opinion and only my opinion is what I tell them and if they choose to come, they do. Which, I don't like to take people's money if I know absolutely they are going to come to you and you are going to tell them no. With that being said we still have to if they are adamant about submitting their application we have to accept it. They are citizens, so...

Mr. Gibbons: Okay, does anybody have any problem with the suggestion Mr. Ingalls had? I think that is a good suggestion.

Mrs. Musante: Okay, okay.

Mr. Ackermann: No, I just want...I think...so this report form is essentially, in my way of looking at it is sort of a snap shot of the situation without all the attachments.

Mrs. Musante: Correct.

Mr. Ackermann: Because right now we have to wade through the entire report to find...

Mrs. Musante: You are still going to have all of that...

Mr. Ackermann: Yes, we will certainly have it, but if...

Mrs. Musante: It will be right up front. Correct.

Ms. Stefl: Almost like Cliff notes.

Mr. Ackermann: I really appreciate it. I think this is a really good way to do it.

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Mrs. Musante: Okay.

Mr. Ackermann: It makes it a lot...

Mrs. Musante: Please tell...

Mr. Ackermann: You get an overview and the other stuff later.

Mrs. Musante: If you want to take the next month to look over this and throw back at me some suggestions or if you want, we do have a new application in for April. I would be more than willing to put that application into the new format if you want to see it.

Mr. Gibbons: Why don't we try that?

Mr. Ackermann: I think so.

Mr. Gibbons: For next month's application.

Mr. Ackermann: Yeah, I think so, sure.

Ms. Stefl: So just the new applicant and not the one that we just...

Mrs. Musante: Correct.

Ms. Stefl: Just to make sure. So it is not more work for her.

Mr. Gibbons: And then we will see how it works and how it feels. And then what about Larry's suggestions about putting those points in the application?

Mr. Apicella: I think I would be great and helpful.

Mr. Gibbons: Okay, does anybody have any problem with that?

Ms. Stefl: No.

Mr. Apicella: I do have a question as a newbie on the BZA. I see in the proposed format you have got on page 4, a condition...staff recommending the following conditions which I like. Can staff not make an overall recommendation?

Mrs. Musante: I did speak with the Zoning Administrator about that because I did have staff recommendation on this application and she did not feel we should get into the...we should not be making recommendations, was her thought.

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Mr. Apicella: I appreciate her thought. I am asking legally speaking can staff make a recommendation to the BZA?

Mrs. Musante: I believe we can, but I can verify that with our County Attorney's office.

Mr. Gibbons: The same thing when the Planning Commission recommends...the staff recommends to the Planning Commission.

Mr. Ingalls: Again at that meeting, I think he asked how many. That is always a question, every time I have heard Mr. Chandler speak, how many get staff recommendations? And it is usually fifty/fifty on the BZAs. The staff is giving the BZA a recommendation.

Mrs. Musante: Mr. Ingalls have we ever given recommendations?

Mr. Ingalls: In thirty some years I believe we have.

Mrs. Musante: Have we?

Mr. Ingalls: But it was way back there.

Mrs. Musante: Okay.

Mr. Ingalls: Under your conditions would you really say if approved, staff recommends the following condition?

Mrs. Musante: If approved.

Mr. Ingalls: Huh?

Mrs. Musante: What did you say?

Mr. Ingalls: If we, you know because...

Mrs. Musante: If approved. Okay?

Mr. Gibbons: Now there is one other comment that I picked up in the last few months. There was a question Melody, as who submits the application? And one of the problems we have been having is a lot of them come in and the lawyer is the applicant.

Mrs. Musante: Correct.

Mr. Gibbons: I think it ought to be the applicant.

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Mrs. Musante: We have...ever since I have been working with the BZA, we have always accepted attorney's applications as them being the applicant and we have advertised as them being the applicant.

Mr. Gibbons: Yes I know, but I don't go along with that but I am just one...

Mr. Apicella: I think it is not particularly helpful to me or to the public to see X law firm, X law firm, X law firm. Ultimately they are doing it on behalf of an applicant.

Mrs. Musante: Right.

Mr. Apicella: They are not the person who is going to be positively or negatively impacted by the BZA's decision.

Mrs. Musante: But on our application, I mean it says applicant, and if John Smith, attorney is the applicant and fills that out, that is how we do the ad.

Mr. Apicella: I understand, but I guess my suggestion would be that we fix the application or in the advertisement it is X law firm on behalf of...

Mrs. Musante: I understand. Okay.

Ms. Stefl: Yes I would like to...I too would like to see the variance application modified and have the applicant information is John Smith and another box that says, you know, legal representation so than it does say whatever law firm and then owner information or whatever. So it is almost like adding one little square or box.

Mr. Ackermann: But then you also have like a current case the applicant was different than the owner and it was not a legal representative. It just happened to be...

Ms. Stefl: You just adding more...extra...I mean there would be three boxes then.

Mr. Gibbons: Just give it some thought. I know that we had brought it up

Mr. Ackermann: We also had a case once where a construction firm was applying...

Mr. Gibbons: Right.

Mr. Ackermann: ...for the exception rather than the owner. Of course the owner was...

Mr. Gibbons: Okay.

Ms. Stefl: Then they are the applicant.

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Mr. Ingalls:- It gets a little complicated, but I am assuming when an attorney files the application, he has permission.

Mrs. Musante: He does. He files an owner's consent form.

Mr. Ingalls: Whatever.

Mrs. Musante: Correct.

Mr. Ingalls: And he has permission, that the owner of the property gives him permission to do that.

Mrs. Musante: Correct.

Ms. Stefl: But when I go to court and I am represented by Mr. Attorney, it says Stefl versus Commonwealth of Virginia. My name is named, now my representation is Joe Smith whatever, but it is Stefl versus Commonwealth it is not the attorney name versus Commonwealth of Virginia and that is pretty much what we are is a judicial...quasi-judicial and it goes up to the Circuit Court.

Mr. Ingalls: I don't have a problem if you want to put a separate box for attorney's on here.

Ms. Stefl: Right.

Mr. Ingalls: I don't know that...because like tonight you could have had an attorney representing...could have filed the application actually for Mr. Scott who got permission from Mr. Musselman to be able to file a request for a variance.

Ms. Stefl: Well I am actually surprised that Mr. Scott's the one who did file considering he is not the owner of the property yet.

Mr. Gibbons: No but you always...that is pretty common.

Ms. Stefl: That is common?

Mr. Gibbons: When you go buy a piece of property subject to zoning or a variance that is part of the transaction.

Ms. Stefl: Yes.

Mr. Ingalls: A lot of zonings are by an applicant who is not the owner.

Mr. Apicella: Again I think for me for public visibility and transparency, it makes sense to associate the request for review under the person that is making the application. The person who is impacted not the law firm who is representing them.

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Mrs. Musante: Okay.

Mr. Apicella: Ten years from now we want to know Mr. Scott, it was not X law firm that put this case in front of us.

Ms. Stefl: Right.

Mr. Apicella: It was Mr. Scott.

Ms. Stefl: Yes Mr. and Mrs. Scott.

Mr. Davis: The variance is given to the owner not the attorney.

Mr. Gibbons: That is true. And I agree with it.

Mr. Ingalls: Not to the applicant, it goes to the property.

Mr. Gibbons: So can you take...

Mrs. Musante: Can I ask another question?

Mr. Gibbons: Yes go ahead.

Mrs. Musante: This is a separate question. I understand what you all are saying there and we will work on that. Back to the staff report, there are a couple of options on the last page and the second to the last page as far as tax map and vicinity map. If you could look at that and tell me which option you like better. These maps will definitely be clearer by the time they come to you. Keep in mind this is still a draft. The first option gives you, which is basically a tax map and then an aerial view and the second one gives you an areal view with the lot outlined and it will have subject property typed in over top of it.

Mr. Gibbons: Any reason we wouldn't get both?

Mrs. Musante: I am asking you if you still want both?

Mr. Gibbons: I would.

Mrs. Musante: Both? Okay.

Mr. Ingalls: The tax map actually shows zoning.

Mrs. Musante: It does.

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Mr. Ingalls: And it is clear.

Mrs. Musante: The vicinity map does show zoning, it is typed on there instead of the color.

Mr. Gibbons: Correct.

Mr. Ingalls: Yes, it is still there.

Mr. Gibbons: Okay, that's good.

Mrs. Musante: Both? Okay.

Ms. Stefl: I like both.

Mrs. Musante: Okay, not a problem.

Mr. Gibbons: Anything else?

Mrs. Stefl: I think you are doing a wonderful job.

Mrs. Musante: Thank you.

Mr. Gibbons: The last thing that I want to report before we have...we did not have an election in January, was that before Joe Howard left as County Attorney he did what we asked him to do. That was go out and get bids on representation and so he went out and the firm that they had selected...

Mr. Ackermann: Excuse me.

Mr. Gibbons: ...was a firm out of Fredericksburg and the ladies name is Houck. They used to belong to Russ Roberts and they divided. So they came in with a proposal and the Chairman said just give it to me and I will run with it. So at the last meeting he ran with it and I guess we need a little bit more information so I started a white paper to go down through things so right now what the County Attorney was concerned about, does everybody know the law got changed last year where you can not sue a BZA member. You just can't do it in Virginia no more. But what we wanted is just like tonight, it would have been nice if we had some legal representative in case you got questions on code. And so that is what we told him and he went forward with it. There is some confusion, either the lady did not type the date in right, for what fiscal year you are talking about. So we will go back, but we agreed because of the budget constraints to cap it at ten thousand dollars. And that would just be for the meetings only, since we are not going to get sued by anybody in court. It is just for the meetings only and we would have a representative. It was a very reasonable rate that came in. In fact it was extremely reasonable. And so we are going to go forward and he has deferred it and he is going to take it back to the Board. So I wanted to let you know that we have been working on it.

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Dr. Larson: It might help if we all contacted our Board members and asked for some help in this regard. The issue is what is more efficient for the County? Is it more efficient for us to do the right thing at this level so if we have legal advice to help us do the right thing at this level and keep up apprised of all the precedents so our decisions are more or less correct so that they don't have to go to the next level. Is that more cost effective to advise clients or taking up the courts time with more and more cases with people who think we did not do the right thing.

Mr. Gibbons: We agree. The last issue on the table is we didn't have a meeting in February for the annual business meeting. So we have to elect officers for next year.

ELECTION OF OFFICERS

Mr. Ingalls: Who is the vice chair?

Mr. Gibbons: Dr. Larson.

Mr. Davis: I nominate myself for Treasurer.

Dr. Larson: Second.

MOTION:

Mr. Apicella: I will open the floor for nominations. So Mr. Chairman, if you are interested I would like to nominate you to serve another term as Chair.

Ms. Stefl: I second.

Mr. Gibbons: I would be honored to do that. But I don't want to take it away from no one else. We have a motion on the floor and seconded. All in favor say aye.

VOTE:

The motion for Mr. Gibbons as Chairman passed 7-0.

Mr. Ackermann – Yes

Mr. Apicella – Yes

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Ingalls – Yes

Dr. Larson – Yes

Mrs. Stefl – Yes

MOTION:

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Mr. Gibbons: All opposed. And I would like Dr. Larson to be the Vice-Chair.

Mr. Apicella: Second.

Mr. Gibbons: All in favor say aye.

VOTE:

The motion for Dr. Larson as Vice-Chairman passed 7-0.

Mr. Ackermann – Yes

Mr. Apicella – Yes

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Ingalls – Yes

Dr. Larson – Yes

Mrs. Stefl – Yes

MOTION:

Mr. Gibbons: And then Marty would be the Secretary.

Mrs. Musante: Okay.

Mr. Gibbons: Okay.

Mr. Apicella: Do we need to take an official vote just to....

Mr. Gibbons: Yes. All in favor of Marty say aye.

VOTE:

The motion for Mr. Hudson to be Secretary passed 7-0.

Mr. Ackermann – Yes

Mr. Apicella – Yes

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Ingalls – Yes

Dr. Larson – Yes

Mrs. Stefl – Yes

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Mr. Gibbons: Okay.

Mrs. Musante: Wow.

Mr. Ackermann: Mr. Chairman I am really happy with the slate that we elected. I really think you have done a wonderful job this year and you have done a wonderful job as Vice-Chair. And if Marty were here I would say a great job as Secretary too. You certainly have my confidence. It is a good choice. Thank you.

Mr. Gibbons: You all have been good to us. And I do want to...we sent our report to the Board and it was in there of the staff's outstanding support. And the Board appreciated that. So Melody and Aisha, I hope you realize what I wanted to do was I...Rachel being here, I think we ought to do a little luncheon or just an evening dinner before she retires. We will select a time we all can go and take care...I mean when you put twenty-six years in we should at least say thank you.

Ms. Stefl: We should super-size it.

Mrs. Musante: Super-size, I love it.

Mr. Gibbons: Let me know Melody, I mean we can send a request to the Chairman and I would like to do that. We ought to give her a proclamation and we ought to submit that now before it gets in the rat race that she is commended for her work. It is a tough job. Does anybody have any problem that we request the Chairman?

Mr. Ackermann: No, I think that would be great.

Mr. Gibbons: Okay. Alright, so we will do that. Okay thank you very much and we will adjourn.

ZONING ADMINISTRATOR REPORT

None

ADJOURNMENT

With no further business the meeting adjourned at 8:31P.M.

Robert C. Gibbons, Chairman
Board of Zoning Appeals